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Memorial

to the late

Judge John W. Warrington

U.S.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS (6th circuit)
FOR THE SIXTH CIRCUIT

Memorial

to the late

Judge John W. Warrington

CINCINNATI, OHIO
NOVEMBER 14, 1921

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Edwin Gholson

MEMORIAL

Judge Knappen: Governor Harmon, will you present the Memorial?

Governor Harmon: May it please the court, the committee appointed by the court for the purpose, reports the following Memorial of the late Judge Warrington:

JOHN WESLEY WARRINGTON was born near South Charleston, Ohio, July 22, 1844, in a log house which is still standing. His father, a native of England, was a Methodist minister. He died very young, when John was only five years old. The mother, Mary Davisson, was the granddaughter of an officer in the Revolutionary war. Her father crossed the mountains from Virginia late in the eighteenth century and settled on the farm on which Judge Warrington was born. He was one of the pioneers of that region.

After the father's death the mother went to live on the farm and there brought up her family, displaying the well-known traits of American mothers in such emergencies.

John was the eldest boy and led the usual life of the farm, getting only such education as country schools afforded, in those times, from late fall to early spring.

Near the close of his eighteenth year he enlisted in the 110th Ohio Volunteer Infantry, which became part of the Ohio Brigade in the Sixth Corps of the Army of the Potomac, commanded by General Sedgwick. He took part in all the battles in which that famous corps was engaged, including those of the Wilderness and of General Sheridan's campaign in the Shenandoah Valley. He was close by when that General reached the field after his celebrated ride. His regiment was one of those sent to New York to suppress the draft riots, and was part of the small force at the battle of Monocacy with which General Lew Wallace held back the Confederate Army under General Early long enough to save Washington from capture.

At the battle of Petersburg, shortly before the surrender of General Lee's army, he was severely wounded in the knee. Only his determined opposition, backed by an army nurse, prevented amputation. The generous nature which endeared him through life to all who came in touch with him appeared years later, when he was in full practice. Learning that this nurse was to pass through the city, he closed his desk, left his office, met her at the train, and devoted the

entire day to her entertainment. This wound, which shattered his kneecap, gave him pain at times, and caused a limp which he did his best to hide.

After six months in the hospital he returned home with awakened ambition and a broadened outlook on life. His younger brothers had grown into a share of the work of the farm, and, realizing the scantiness of his education, he devoted all the time he could control to study under direction of a minister of the neighborhood, not feeling free—if, indeed, he had the means—to go away to college and leave to his mother the entire responsibility for farm and family.

During this period he also gave some study to the law, and on his mother's death in 1868 he became a student in the office of McGuffey & Morrill in Cincinnati. He entered the Cincinnati Law School in September of that year, graduated after a single term, and was admitted to practice in March, 1869, but before commencing practice he, with several of his classmates, attended the law school another year.

With exceptional men, like Judge Warrington, it may be doubted whether the lack of full, regular courses of study is, in the final outcome, a real disadvantage. They escape the not uncommon delusion among college men that they have secured an education when they have only made a start, and so remain students

for life. Judge Warrington devoted to the defense of the Union the years appropriate for a college course. Conscious of the consequences of this sacrifice, he was always a student, and his unusual capacity for close and continuous application never went untaxed. It was often sorely overtaxed, though he never seemed to realize it.

In the law all hours, days and seasons were alike to him. A key to the law library was part of his regular equipment. For years his sight was seriously affected, but armed with a large hand lens he remained a familiar figure in the courts and libraries. While a judge he was compelled to undergo a grave operation and became entirely blind without the glasses which performed the function of the natural lenses which had been removed.

His ten years on the bench of this court crowned a long and notable career at the bar, during which he took a leading part in a great many important cases. The high service he gave as a judge was only what was expected of him.

The extraordinary part of his professional career was at the beginning. Very soon after he left the law school, before he had opened an office, he was offered, and accepted, appointment to the newly created office of second assistant City Solicitor. The war had

checked the development of cities, and left unsettled many questions about municipal rights, powers and duties under the new Constitution of Ohio adopted only a few years before. The close of the war started a period of great municipal activity, especially in Cincinnati, which brought up these questions. The Solicitor himself was able to do but little court work, because of a severe wound. The first assistant preferred office work, for which he was better fitted. So the trial of cases fell chiefly to the young second assistant. The prospect may well have seemed appalling, except to interests opposed to the city, which were generally represented by the ablest of a then unusually strong bar. It is enough to say that the public and the profession saw often re-enacted in bloodless forensic combat the story of David and Goliath. So prompt and general was the recognition of young Warrington's ability that only his loyalty to his superiors kept him from the solicitorship at the next election. It was merely postponed two years, during which he remained second assistant. He served a single term as Solicitor, declining re-election to engage in practice with Hon. Thomas B. Paxton, in April, 1875. Paxton & Warrington quickly took rank among the leaders and existed with several successive third partners, until Mr. Warrington's appointment as a judge of this court by President Taft in 1909.

After serving as judge with distinction for ten years, he retired in 1919, but did not resume practice, intending, instead, to serve when called on by the court, as he sometimes did when his health permitted.

The high standards set for this court by its first judges, and ever since maintained, are a severe and searching test, which Judge Warrington fully met in all respects. And he has a full share of the credit for making delay of justice practically unknown in this tribunal.

He had none of the showy qualities to help him win the high rank he held as a lawyer. He was not brilliant. He possessed none of the arts of oratory. He was not fluent of speech or facile in expression. But he had a strong and logical intellect, activated by great energy, endurance and a passion for thoroughness, which went straight to essential facts and correct legal conclusions. His arguments were earnest, forcible, clear and persuasive, because they always showed complete mastery of both the facts and the law of his case and his own sincere conviction of its justice. His reputation is built on Doric columns.

Soon after his admission to practice he married his cousin, Caroline Virginia Warrington, and, after her death in 1888, Mrs. Ella Spence Bragg, who survives him. There are two living children of the first marriage, George H., of this bar, and Florence.

He never fully recovered from a serious operation which he underwent after his retirement, and passed peacefully away, at his home, on May 26, 1921, in the seventy-seventh year of his age.

Judge Warrington's reputation ceased to be local early in his career, and his judicial work and decisions spread it more broadly. So the tidings of his death bore public regret and personal sorrow far and wide. But nowhere were these so deep as in his own city and state, and among his comrades at the bar and in daily life, whose respect, confidence and friendly affection he early gained and always kept.

(*Signed*) JUDSON HARMON
CHARLES T. GATES, Jr.
SIDNEY T. MILLER
HELM BRUCE.

Judge Knappen: Mr. Bruce—

Mr. Bruce: May it please the court, I did not enjoy the privilege, which I know was shared by most of those present today, of an intimate personal acquaintance with Judge Warrington. I knew him principally through his opinions and as the presiding judge of this court and from his general reputation as a lawyer at the bar. And I may stop here to say that the elevation of a man to the bench, the wrapping around his shoulders

of the judicial ermine, and giving him the name of Judge, does not make a great lawyer. Every judge knows that, and every lawyer knows that. But when a real leader of the bar, one who has won high place among his brethren through the long, severe test of active practice, whether in the quiet of a lawyer's office, where sound, cool judgment is necessary to guide a client over rough places and to direct him along the path which leads to safety and success, or whether in the more showy work of the public forum, a life where no man can ride on another man's back, where every man must stand on his own feet, win on his own merit or not at all — when such a man, I say, is called from the bar to the bench, where he brings to bear his long experience and his great wisdom and learning and character, not for a stipend, representing an individual private client, but as the representative of the public, to decide causes and demonstrate justice between man and man, or between the state and a citizen, where such is done the people are blessed, and to those who remain at the bar it is a joy, an everlasting joy to appear before him. And this is what happened when Judge Warrington took his seat on the bench of the court that sits in this room.

It is a familiar reference, but I believe one that cannot become too familiar, that, when the people of Israel

were redeemed from their bondage, brought from a state of slavery to the state of a nation, when the recognition of the rights of men and the administration of justice succeeded to the arbitrary execution of the will of a despot, the great leader and law-giver of that people charged their judges thus:

"Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's:" Wonderful words those always seemed to me, words which put a judge in the position of the executor of the will and the mouth-piece of Divinity, make the judgment that of God; words which, I believe, have inspired hundreds of men who have sat upon the bench in ages past, and enabled them to perform, and perform aright, the difficult, delicate and severe duties of their position. I do not know whether Judge Warrington consciously and avowedly undertook to perform and carry out the Mosaic charge, but I do know, as a matter of fact, he shaped his course in accordance with it.

It would not be in good taste for me, in this presence, to speak in eulogistic terms of the court over which he presided, but I do not believe I offend against propriety,

and I believe I can say with the assent of all those who hear me, that as the presiding officer of a court of the United States, than which none stands higher in the land, Judge Warrington was in every way a worthy successor to, and the equal of, William Howard Taft and Horace Lurton, men who have graced the bench of the Supreme Court, the latter of whom, closing his life's service, has won his eternal reward, and the other of whom, formerly a President, is now the Chief Justice of the United States.

Judge Knappen: Mr. Miller—

Mr. Miller: May it please the court, it is my privilege to come here today as a messenger from the bar of Michigan, in its behalf to do honor to Judge Warrington's memory and to cap his fine career with a bit of laurel and a bit of rosemary from a neighbor state. We seldom had the good fortune to see him within the borders of our state, but those of the members of our bar who came here before him will always gratefully recall his courtesy, his patience and his searching analysis of questions arising during argument. Michigan is rightly proud of her sons sitting on the bench of this court, and is happy in the thought that their cordial relations with Judge Warrington smoothed his way while he was sitting with them, and that the

combination of the three made a bench whose opinions were respected throughout the land.

At the meeting of the American Bar Association held in this city last August, Honorable William D. Guthrie spoke on the "Duty of the Bar in the Selection of Judges." In his address he said: "There can be no doubt that the qualities required in a candidate for judicial office should be knowledge of the law, love of justice, probity, impartiality, independence and dignity." Could we find anyone who better measured up to these requirements than our deceased brother, to whose fine record we now bear witness? Surely not. And added to the essential qualities named, we think of him as having patience and gentleness, which characteristics are also greatly prized by practitioners coming in contact with the court. Courage, too, was one of his outstanding qualities, shown by his war record, and even more so by the way he bore his physical infirmities.

An occasion of this kind brings home to all members of the bar how much we owe to those upon the bench. It makes no difference whether we stand as court advocates or office lawyers, our debt to the judges is one we cannot repay. They are the standard-bearers of the law, and we follow where they lead. We recognize this, but seldom, perhaps, give more than

a passing thought to the personal sacrifice to which each standard-bearer must submit when fulfilling his duties. True, a federal judgeship is a position of the highest honor, but the man taking it, in most cases, finds a much smaller income than he could have at the bar, together with more work, more responsibility, and a certain isolation, or rather, insulation, which goes with the dignity of the office and forbids the free and easy converse common to our profession. We know that Judge Warrington measured up to the high standards set by our Court of Appeals in every way. It would be hard to give greater praise.

While on the appellate bench his opinions naturally were required to cover a wide range of questions. It may be truthfully said that he shed light on any subject of which he wrote. He is said to have treated questions in patent cases in a most satisfactory way. His many opinions in damage cases, his interpretation of interstate commerce questions, his clarifying of bankruptcy law, and his rare findings on criminal appeals all have marked the pathways of our bar with well-defined monuments. In this last field, of criminal law, his opinion in the case of Rogers vs. The United States,[1] involving a matter from Sault Ste. Marie, Michigan, decided in the first year of his appellate work, has had a lasting effect on smuggling along our Canadian

1. 180 Federal Reporter, 54

border; and in that same year, in an entirely different field, his discussion of the controversy in the case of Brown vs. Fletcher,[1] which dealt with a bitter fight, lasting more than thirty years, in a partnership accounting, involving very large interests, challenged the attention of the Michigan bar.

It would not be fitting on an occasion of this kind to take up in detail any large number of opinions, but as the lasting work of a judge is developed through his decisions, record should be made of some of those that were noteworthy.

Questions answered by him in Nichols vs. City of Cleveland[2] have been of help in the consideration of condemnation of land by municipalities. Similarly, his analysis in Cincinnati Equipment Co. vs. Degnan[3] aids in the administration of corporate receiverships of a minor nature.

We may also find interesting reading in National Distilling Company vs. Century Liquor and Cigar Company[4] with reference to the use of an individual surname as a trade-mark; Victoria Copper Mining Company vs. Rich,[5] a Michigan mining land case dealing with transactions between antagonistic co-tenants; Lykins vs. Chesapeake & Ohio Railway,[6] interpreting the federal statute requiring the presence of three judges where in-

1. 182 Federal Reporter, 963
2. 247 Federal Reporter, 731
3. 184 Federal Reporter, 334
4. 183 Federal Reporter, 206
5. 193 Federal Reporter, 814
6. 209 Federal Reporter, 573

junctions issued; Federal Insurance Co. vs. Detroit Fire & Marine Insurance Co.,[1] a marine insurance case; Tripp vs. Michigan Central R. R.,[2] dealing with the rights of railroads to limit liability on drovers' passes and others.

After the ordinary run of cases, it must have been a relief to him to deal at different times with two which were distinctly unusual. I allude to Robinson vs. Van Hooser,[3] the Kentucky "night-rider" case, in which the court held that the night-riders were financially liable under a conspiracy charge. The other case is that of Weeghman vs. Killifer,[4] in which a baseball contract between a club and a player was discussed and the reservation clause construed.

The foregoing are but a few of many decisions which should be remembered. In addition to those which are credited to Judge Warrington, doubtless his associates on the bench will recall many constructive suggestions from him which entered into opinions per curiam or those signed by others—just as, indeed, he was indebted to his associates for their clear thoughts.

Solon is quoted as saying that no one should be called happy until after death, since storms and troubles in the evening may change the brightest day. Surely, the after-glow is glorious as we review the career of our distinguished brother who is gone.

1. 202 Federal Reporter, 643
2. 238 Federal Reporter, 449
3. 196 Federal Reporter, 620
4. 215 Federal Reporter, 239

Cincinnati knew and respected Judge Warrington intimately during his whole life, while the State of Ohio was honored when he was chosen for this bench. Once upon it, however, he was proudly claimed by all the states within this circuit, as a representative of the whole, and as such all will regret that he could not have been with us longer. His part was well and truly done —may the happy knowledge that his profession so determined, when his career was finished, give him rest in peace.

Judge Knappen: Senator Cates—

Senator Cates: May it please the court, and gentlemen of the bar, in what has been said in the resolutions and by my brethren from Kentucky and Michigan, it would seem that little remains to be said, and in all probability there are many here today at the bar of this circuit to voice their affection and respect for him who has gone before, whose memory we honor, and in honoring him do honor to ourselves and our profession. And it might seem that I should be content with being privileged to join in the portrayal of his life so tenderly and simply expressed by his distinguished and long-time friend and submitted in the resolutions of the lawyers from every state, and the judges, too, of this judicial circuit, the record of whose court contains the matured expression of a life well spent and of his duty

well done, as he saw it. I, therefore, cannot let the opportunity pass for a personal tribute, a tribute from the bar of Tennessee to him.

It was not my purpose to attempt to anticipate what shall be said, or supplement what has been said by those who knew him more intimately concerning his accomplishments and successes as a lawyer. Nor could word of mine add luster to the record made as a judge of this court, whose high standards reflect in the confidence in courts inspired by his illustrious predecessors, among whom was Taft and Lurton and Day and Severens and Jackson. But they have been made more enduring by the painstaking and conscientious and able way of him and his associates. That record, the decisions of this court, will bear testimony far beyond the time when the words spoken here today will be forgotten. However, one thought has been struggling for fitting expression since the brief and simple and reverent summary of his life's work was submitted to me by the Chairman of the Memorial Committee, and while I infer I cannot express or convey to your minds the thought that fills mine, it is, inadequate as may be my words, that his career as portrayed in these resolutions exemplifies and represents the high type of American citizenship that finds no truer or higher expression than in the rank and file of American lawyers bred of the land that has nurtured them and their fathers, and who have drunk in

and made a very part of their lives the institutions of their country, of which it has been said they are the hereditary defenders. It has also been said that this is a government of lawyers; and certain it is that in every period of our national life the American lawyer has been in the forefront of citizenship and in the vanguard when there was need of champions for the defense of constitutional liberty, either to lead an attack upon, or to resist the encroachment of selfish and centralized interests, or those strange and sordid and poisonous "isms" abhorrent to constitutional, representative government.

Great names have towered over that rank. Their roster is not to be called here today; but they have been, and are leaders of thought, and, as was said by one of the great Chief Justices of Tennessee, "They are the unbonded trustees of the world's business; they are trusted counsellors in every community; and there has never been a vain appeal to them to place the interest of state above the interest of self. Remaining true to the traditions of their profession, superior to the blandishments of power or the charm of wealth, they have been, they are, they will ever be, best equipped to serve the state."

Of this class, of this profession, sprung from the ranks of American manhood and American lawyers, he whom

we revere, and his life, whether at the bar or on this bench, affords a high, deep and a worthy example for those who follow him.

Just a word, a personal word. It was not vouchsafed to me to know him intimately, as to many who are here today. Aside from his reputation as a lawyer, and the reported decisions of this court, delivered through him as this court's mouthpiece, I came into contact with him only as a judge presiding on this bench; and I desire to add my testimony to his unfailing courtesy toward, and consideration for, counsel who appeared before him. Yes, he asked questions; but it always seemed to me that his inquiries were intended to elucidate the question involved, to seek the truth and justice of the case, and it seemed to me that in his courtesy and gentleness there was oftentimes, in his inquiries, a marked diffidence. But counsel were dense indeed who did not recognize that acute and trained intellect back of the questions, of the lover of truth and justice propounding them.

As was said of another great and loved judge, he was gentle in his life, and the elements were so mixed in him that Nature might stand and say to all the world, "This was a man!"

It is this wreath, as a tribute of their respect and affection, that the bar of Tennessee has commissioned

me to bring to the altar erected here today, in memory of that good citizen, that able lawyer, that conscientious and just judge, our lamented brother, John W. Warrington.

Mr. Pogue: May it please your Honor, your associates on the bench, and the bar of the Sixth Judicial Circuit of the United States Court: I consider myself honored, though only recently advised, that I am to say a few words about Judge Warrington. It is a message from the Cincinnati Bar.

Judge Warrington was essentially a man of the bar, of which he was a member, and one who considered it his duty to perform fully anything which he undertook.

It is related of him, many years ago, and this continued throughout his life and before he entered upon the bench, that when a young practitioner approached him to discuss any serious and intricate proposition, the younger member of the bar always felt, after only a brief conversation, that this older and more experienced man was only too willing to lend him aid and help him in unraveling the difficulties that confronted him, whether he ever became counsel in the litigation or not.

It is further known of him as a member of the bar that, when elections for judges were approaching, and

he felt someone was being considered, or someone had actually been nominated, who was unworthy of the support of the bar of this city, and it made no difference to him that the candidate thus before the public was of the same political faith as Judge Warrington, he had no hesitation in taking the initiative and joining with others to see that this unworthy candidate should not be elected to the bench. He would support another candidate of opposite faith and give him his vote.

Throughout his career as a practitioner he kept in close touch with the members of the bar. After he went on the bench he never ceased to have the most friendly relations with those in the practice, and evidenced it by his very frequent attendance at the meetings given by our bar.

He had a keen sense of humor, which he maintained through his judicial career. It is related of him that when one of the judges who had served for a number of years on the bench of our local courts, retiring from the bench, appeared before the distinguished Circuit Court of Appeals, Judge Warrington noticed him before the court as he was ready to make the opening presentation of the case. This was the first time that the former judge had appeared in that court. Judge Warrington, leaning forward with that solemn voice, yet with his genial smile, said: "This is the first time that this court

has had the pleasure of having you appear before it since I have been on the bench. I want to say to you now that I have very vivid recollections of some of the decisions that you rendered against me when I was appearing as attorney before you, and I shall bear them in mind, as you present this case. This is where I get even." This was not said except in the most pleasing humor and for the sole purpose of making the counsel feel that even a court of that distinction could enjoy a little bit of fun occasionally. The case was decided in favor of the ex-judge.

As stated, he always remained in close touch with the members of the bar, and I recall vividly the night that the bar tendered him a dinner on his retiring from the bench, and at that dinner he was called upon to respond on any subject he chose. Uppermost in his mind, for the moment, seemed to be the feeling, so prevalent in this country, that there was a certain class of people who were not supporting the National Administration as fully as they should, or who were caviling at what the administration was doing. He concluded his address with that vehemence and fervor which he must have shown when fighting for his country in the war of '61, and stated, that, notwithstanding his age, he would be only too glad to go out again and shoulder his old rifle and fight for the principles that underlie the foundation of our government.

The last public meeting in which he appeared was in April, 1921—the month preceding his death. He was seated at the speaker's table with a number of distinguished guests of the bench and bar of Cincinnati and other cities, and officers of the American Bar Association. Without his knowledge of what was going to be done, the president of the Cincinnati Bar Association, not thinking of calling on Judge Warrington for a speech but for the sole purpose of dignifying the committee which would be appointed, announced to the large assembly gathered that Judge John W. Warrington had been chosen as the Chairman of the Committee on Reception for the meeting of the American Bar Association to be held in Cincinnati. This announcement was greeted with most marked applause, but did not equal in any sense that which followed. In a few moments Judge Warrington arose and said the honor had been imposed upon him without his knowledge, but that he was "glad to accept and would perform his duty." The applause was so great and continued that it was with difficulty that order could be restored. They knew there was a man who had served his country well as a youth, who had served his clientele well as a practitioner, and who had spent some of the best years of his life in lending distinction to the bench, and yet was still the same man that he was in all previous years—ever ready to perform his duty.

Whether we admire Judge Warrington for his success in the profession, whether we revere him for his friendship, or whether we recognize him for his eminent distinction on this bench, his memory will be forever honored and cherished by the bar of Cincinnati.

Governor Harmon: May it please the court—

Judge Knappen: Governor Harmon.

Governor Harmon: We have in Ohio an acknowledged Nestor of our bar. He is approaching his ninetieth year, with faculties unimpaired, and has behind him a long and distinguished record as a lawyer and a statesman. If our departed friend could look down today at this meeting, I am sure he would appreciate a word from nobody more than from the Honorable John A. McMahon, of Dayton, with whom, for many, many years, he was often associated in important cases. This letter has just been handed me since I sat down, and with the permission of the court I should like to read it. It is addressed to the Committee.

"Dayton, Ohio, November 14, 1921.

Hon. Judson Harmon,

Cincinnati, Ohio.

My dear Judge Harmon:

I regret very much my inability to attend the memorial meeting in honor of Hon. John W. Warrington.

With your permission I send this small tribute to one whom I sincerely loved. We were intimate friends, and our association combined the solution of intricate legal problems with the enjoyment of close and delightful social intercourse.

Judge Warrington was a great lawyer. My judgment of his ability was formed years ago, and resulted in his being called into consultation in numerous cases when the responsibility was great. His knowledge of the law was accurate and extensive, and his opinions in conference were always sound and dependable. When he announced his final views (for he was always deliberate) I felt that the problem was solved, if it was capable of solution.

But I need not enlarge upon this side of his character. The bar knows his capacity and the national reputation that he bore. And when he went upon the bench the wise and judicial mind was publicly displayed and made manifest by his accurate and elaborate opinions.

But the personage that appeals to me most strongly, and dwells in my memory at all times, is John Warrington the man—the kind, gentle, genial, cultured and lovable man and companion, whose society was an education and a genuine pleasure. How well do I remember our adjournments to the St. Nicholas or to the Queen City for a modest lunch, when the tangle of legal prob-

lems were laid aside for the pleasure of social intercourse. It was on those occasions I learned to know the man, and to love him as I had never loved another man. Here I found him to be honest, modest, intelligent, genial, a first-class citizen, and possessed of all the qualities that enter into the making of a splendid man.

It is not often that the qualities of our friend's mind are found so marked in one individual—especially so well balanced.

I believe that the choicest paths in Paradise are his to use, and the best seat to hear the Heavenly Angels chant their glorious music.

Yours truly,

(*Signed*) JOHN A. McMAHON."

Judge Knappen: The Chief Justice of the United States writes briefly expressing his great regret that he is unable to be present. He says, among other things: "I attended his funeral, and would be glad to pay the additional tribute of attendance at the memorial meeting, but my present duties, as you know, are so absorbing as to make it impossible."

Several of the District Judges who have been unable to be present have written words expressive of their regard and regret.

Judge Tuttle, for example, says: "I wish I might meet with you and by my presence show the admiration and affection which I feel for the memory of this distinguished friend. It does not seem practical for me to attend the meeting, but at two o'clock in the afternoon of November 14th, my thoughts will turn to the meeting and will be filled with sentiments in keeping with that solemn occasion."

Judge Evans, of Louisville, says: "It has fallen to my lot to know all of the judges of this circuit since the organization of the Circuit Court of Appeals. Those in office when I came to the district bench were Judges Taft, Lurton and Day, each one of whom afterwards reached the Supreme bench, a most remarkable coincidence. While honoring them all, there was no one of the circuit judges for whom I had a more affectionate regard than I had for Judge Warrington, whose genial friendship will always be a cherished memory."

Judge Westenhaver, of Cleveland, says: "Judge Warrington's memory and my association with him will always remain vivid and a real influence and inspiration to me in my official work. His unfailing courtesy, his unlimited patience, and his high conscientiousness in the performance of every duty may be equaled by others, but in my opinion were never surpassed. It seems to me that no one could be associated with him

personally without imbibing a deep personal affection for him. Such at least was my experience, and it was with no little grief that I learned that the years of leisure and relatively easy work, to which he had looked forward, were not spared to him."

Judge Killits says: "One of the cherished experiences of my life was the privilege of have known and to have been officially and socially associated with Honorable John W. Warrington. I cannot hope that the official and social contacts which we mutually experienced could have meant as much to him as they did to me. No tribute offered at the meeting could possibly voice a love and reverence for his memory which exceed the feelings entertained by me."

Thereupon Judge Knappen read the following Memorial:

The memorial prepared by the committee, composed of a representative member of the bar of each of the states in this circuit, fitly expresses the appreciation which the accomplishments of our late associate, Judge Warrington, have earned from bench and bar alike. The addresses made in support of the memorial, the large attendance upon these proceedings and the expressions of regret by those unable to be present have further impressively testified to the respect and affection in

which our brother was universally held and to the sorrow which his passing has occasioned. The formal memorial and the personal tributes alike have the unqualified indorsement of this court.

We can scarcely hope to add anything of substantial value to what already has been so well said. But we cannot let the occasion pass without recording in some measure the regard in which our brother was held by the members of this court.

Judge Warrington came to this bench in the full maturity of his powers and as the culmination of a long and distinguished career at the bars of the state and nation. He came with the highest appreciation of the traditions of "the old court," as he was accustomed fondly to call it, and with the determination that the standards set by his illustrious predecessors should not be lowered. If there has been failure to maintain those traditions, the fault has not been that of Judge Warrington. His ten years upon this bench formed a most happy crowning of his professional career. He brought with him the great legal learning, love of study and application which had marked his work at the bar. His judicial opinions, several hundred in number, written during his service here, have greatly enriched the body of adjudicated law, have securely established his position as a truly great appellate judge, and are

enduring monuments of the well-directed industry of a deeply stored and highly trained legal mind.

He was always in sympathy with remedial legislation. He had a keen sense of the ethics of the profession and of the bench. The uniform courtesy and consideration shown counsel, as well as his associates, emanated from a well-poised mind joined to a lovable personality. In the soul-searching comparison and discussion of the differing impressions sometimes held by the various members of the court, and the effort to arrive at harmony of view consistently with due regard to the rights at stake, he was never found wanting. He never jumped at conclusions. He always wanted to hear the last word in argument. Indeed, it frequently seemed to pain him to bring to an end an interesting legal discussion. Painstaking to a degree, in his opinion work he recognized no such thing as a "commonplace" unless he knew he could fortify it by precedent.

It is no exaggeration to say that he adorned the bench. In all the relations of life he rang true. To modesty and gentleness he added strength. He exemplified the golden rule. He was a man of a thousand. To have been associated with him was a distinct privilege. The memory of that association and the cordial friendship which went with it will always be lovingly remembered. As an illustration of the affection he

inspired in all those brought into close contact with him, it seems not out of place to say that in connection with his retirement the judges of the various district courts of this circuit united in presenting him with a fitting and permanent testimonial of their affectionate appreciation and regard.

It was characteristic of Judge Warrington that when the time came at which it seemed prudent to carry a lighter burden, he deliberately chose to retire rather than to resign, in order that he might continue to render the judicial service which he really and truly loved. It was a great disappointment to him, as it was to his associates, that during the last year and a half of his life failing health prevented the carrying out of his cherished plans.

The memorial which has been presented today will be spread upon the journal of this court as a merited tribute to the character and worth of our late associate.

THE EBBERT & RICHARDSON CO.
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